

# KNOW *your* RIGHTS

*Read about your rights in this country*



SURVIVING DOMESTIC ABUSE IN THE USA  
**1-800-799-SAFE (7233)**

## ***Know Your Rights***<sup>1</sup>

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### **NO ONE EVER DESERVES TO BE HURT BY DOMESTIC VIOLENCE.**

Regardless of your immigration status, you have the right to be safe in your own home. You have the right to leave or have anyone removed from your home who abuses you and/or your children physically, emotionally or sexually. No one has the right to hurt you or your children in any way.

#### **What is domestic violence?**

Domestic violence is violence that happens between partners or former partners in a relationship. This can mean between: spouses, boyfriends and girlfriends, same sex partners, relatives, and parents and their children. Domestic violence can happen anywhere, inside or outside of your home. Domestic violence can happen when you live together, when you are separated, or when you are divorced.

If you are experiencing domestic violence, you are not alone. Domestic violence is very common. Although domestic violence is usually hidden, it exists in every community, in all cultures, and all religious sects.

Domestic violence often gets worse with time. It does not go away on its own. Domestic violence is a crime in the United States. Domestic violence is not your fault. Every person can get help even if they do not have government permission to be in the United States.

Although this booklet will refer to the abuser as “he,” we do acknowledge that men can also be victims of domestic violence and that some women are abused by other women.<sup>2</sup> VAWA was designed to be gender-neutral.

Domestic Violence can include:

- Hitting, punching, slapping, or kicking you, your children, or your pets
- Threatening to hurt or kill you
- Making you have sex when you do not want to
- Threatening to report you to the Department of Homeland Security (DHS) and have you deported

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- Controlling where you go and whom you can see, talk to or write to
- Controlling your access to money, taking your money away from you, or making you say how you have spent money
- Refusing to file immigration papers for you or threatening to withdraw papers
- Withholding or destroying your passport and other personal documents
- Making you feel like a prisoner in your own home

### **MYTHS AND FACTS ABOUT DOMESTIC VIOLENCE**

*MYTH: Domestic violence only occurs in American families.*

**Fact:** Violence occurs in families of every culture, nationality, religion, class, race, and socio-economic background.

*MYTH: Battering is a family matter.*

**Fact:** Domestic violence is a crime regardless of the relationship between people.

*MYTH: I am in the United States without legal permission, so I cannot get help.*

**Fact:** Any woman facing violence, regardless of immigration status, has a right to go to a shelter, get a protection order, to call the police for help, or use any program that helps victims of domestic violence.

*MYTH: It is easy for battered women to leave their abusers.*

**Fact:** Leaving an abuser is very hard. Women may fear that they will be severely hurt or killed if they try to leave. They may not be able to support themselves. They may want to keep the family together. They may be afraid of losing friends, family, or contact with their community.

*MYTH: If I leave my abuser he will get custody of the children and I will not be able to see them.*

**Fact:** Courts in the United States generally do not give custody of children to abusive parents. This is true even when one parent is a citizen and the other does not have legal immigration status.

### **Help All Battered Immigrant Women Can Receive**

Even if you do not have legal immigration status in the United States, or if your legal status is tied to your abuser's work visa, you can receive all of the following services:

- Services from shelters and other domestic violence programs;
- Civil protection orders from a court;
- Custody and support for children;
- Police assistance;
- Emergency medical care;
- Your abuser can be criminally prosecuted; and
- Your citizen children can receive public benefits.

### **Police Assistance for Battered Immigrants**

Domestic violence is against the law. If you want to leave, then the police can help you and your children get out of the house and often they can drive you to a safe place. The police may



arrest your spouse/intimate partner if they think that a crime has been committed. If the police officer does not speak your language, find someone to interpret for you or who can help you ask the police to get an interpreter. Most police officers do not enforce immigration laws. However, in some places or situations they do. You can ask a local domestic violence or immigrant community based advocate to find out if the local police enforce immigration law your community.

### **Immigration options if you are battered, assaulted or the victim of criminal activity**

There are twelve ways you or your child may qualify for legal immigration status without your abuser's knowledge, help, or control. The immigration relief you may qualify for, depends on:

- Who abused you
- If you are or were married to your abuser (both heterosexual and same sex marriages qualify)
- If your abuser is your parent, step-parent, or over 21 year old son or daughter
- If your child has been abused
- The immigration status and/or citizenship of your abuser
- If your spouse ever filed immigration papers for you
- If you came to the United States on a fiancé visa

The immigration options for battered immigrants are:

- 1) The self-petition under the Violence Against Women Act;
- 2) The battered spouse waiver;
- 3) Cancellation of Removal under the Violence Against Women Act (only after you have been placed in deportation proceedings)
- 4) The crime victims visa, called a U-visa;
- 5) Gender-based asylum;
- 6) The trafficking visa, called a T-visa
- 7) VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997;
- 8) VAWA Haitian Refugee Immigration Fairness Act of 1998 (HRIFA);
- 9) VAWA Cuban Adjustment Act of 1966;
- 10) VAWA Abused Adopted Child Protections;
- 11) Special Immigrant Juvenile Status (includes special protections under VAWA 2005);
- 12) International Marriage Broker Regulation Act Protection and access to information

### **1. Self-petitions Under the Violence Against Women Act (VAWA)**

VAWA "self-petitioning" is available to spouses and children abused by their U.S. citizen or legal permanent resident spouses, U.S. citizen or legal permanent resident parents, or over 21 year old U.S citizen sons or daughters. If you have been battered or subjected to extreme cruelty you do not need to rely on an abusive spouse, parent, or over 21-year-old child to file papers for you to get legal immigration status. These protections are available to all married persons including both heterosexual and same sex marriages.

Unmarried children under the age of 21 who are being abused by a parent who is a U.S. citizen or a lawful permanent resident are also eligible for a self-petition, if they file before age 25.

If your child has been abused by your citizen or lawful permanent resident spouse you may also qualify for a self-petition, even if you have not been abused yourself.

If your spouse or parent never filed for your "green card," if he filed and then withdrew the application, or if he filed but you fear he will refuse to help you get your "green card," you may be able to apply for a **VAWA SELF-PETITION**.

You may qualify for self-petitioning IF YOU ARE:

- Married to a U.S. citizen or a lawful permanent resident, **OR**
  - Were divorced less than two years ago from a U.S. citizen or lawful permanent resident spouse; **OR**
  - The child of a U.S. citizen or lawful permanent resident; **OR**
  - The parent of an over 21 U.S. citizen son or daughter
- AND**
- You are living in the United States; **OR**
  - You are living abroad **AND**
    - You were abused in the United States; **OR**
    - Your abusive spouse or parent is an employee of the U.S. government or a member of the U.S. armed forces;
- AND**
- You or your child were abused or you suffered extreme cruelty from your spouse or parent<sup>3</sup>

## 2. Battered Spouse Waiver

Some battered immigrants are married to spouses who filed immigration papers for them, but did not finish the process. If your U.S. citizen spouse filed immigration papers for you, but you were married for less than two years on the day you both went to your interview with DHS, what you received is called “conditional temporary residency,” which lasts for two years. At the end of two-years, you and your spouse must file a request together for you to receive lawful permanent residency.

If you are or have been abused and your spouse will not help you in filing the petition to move from your conditional status to legal permanent residency, you can ask for a **BATTERED SPOUSE WAIVER** to keep your lawful immigration status. You qualify for a battered spouse waiver if:

- 13) You have a conditional “green card” that lasts for two years; **AND**
- 14) You or your child were battered or subjected to extreme cruelty by the citizen spouse; **AND**
- 15) You can prove that your marriage was valid.

You can file for a battered spouse waiver at any time. You do not have to wait two years. Your batterer will not be able to find out that you filed. You can file if you are still living with your abuser, if you are divorced, or if you are separated.

## 3. VAWA Cancellation of Removal

Some battered immigrants who qualify for, but do not yet have, VAWA immigration are reported to DHS by abusers or are picked up by DHS. These immigrants can still get legal residency through “cancellation of removal” (formerly suspension of deportation). This is only if you are in, or can be placed into, deportation/removal proceedings. To qualify you must show that you:

- Have lived continuously in the United States for more than three years;
- Are in the United States illegally;
- You or your child have been battered or suffered extreme cruelty;
- The person who subjected you or your child to battering or extreme cruelty was:
  - Your current or former spouse who is a U.S. citizen or lawful permanent resident;

<sup>3</sup> 8 U.S.C. § 1154(a)(1)(A) (2007).

- Your citizen or lawful permanent resident parent or step parent if you are under the age of 21; **OR**
- The citizen or lawful permanent resident other parent of your abused child;
- You must prove that deportation would cause extreme hardship to yourself or your child.

If you qualify, then the court may waive your deportation/removal and grant you legal permanent residency. If you are granted cancellation of removal, then any child of yours under the age of 21, whether living with you in the United States or abroad, can receive humanitarian parole. That means permission to enter the United States and to live with you while you file the papers for them to receive legal immigration status.

**If you lose your VAWA cancellation case you can be deported, so make sure you have a qualified immigration attorney.**

**4. Crime Victim U-visas**

The U-visa offers access to legal immigration status to immigrant victims of domestic violence, rape, sexual assault, and some other criminal activity, most of which are violent crimes. Approved U –visa applicants can receive legal work authorization.

The U-visa is especially helpful if you are abused by:

- A boyfriend or girlfriend; **OR**
- A spouse, parent, or child who is not a citizen or lawful permanent resident, **OR**
- A stranger, employer, co-worker, acquaintance, family member, in-law, etc.

Your relationship to the abuser does not matter. The immigration or diplomatic status of the abuser also does not matter.

To qualify for a U-visa you must prove:

- Substantial physical or emotional abuse from criminal activity;
- That you possess information about the criminal activity;
- That the criminal activity occurred in the United States or otherwise violates U.S. law;
- AND**
- That you have obtained a certification from a government official stating that you:
  - Have been; **OR**
  - Are likely to be; **OR**
  - Are being helpful to an investigation or prosecution of criminal activity.

Many different government officials can certify to your helpfulness or future helpfulness. Check with your attorney for more information on who can certify.

You must have been the victim of one of the following general categories of criminal activity to apply for a U-visa:

<ul style="list-style-type: none"> <li>• Rape,</li> <li>• Torture,</li> <li>• Trafficking in prisons,</li> <li>• Incest, Stalking</li> <li>• Domestic violence,</li> <li>• Sexual assault,</li> <li>• Abusive sexual contact,</li> <li>• Prostitution,</li> </ul>	<ul style="list-style-type: none"> <li>• Kidnapping,</li> <li>• Abduction,</li> <li>• Unlawful criminal restraint,</li> <li>• False imprisonment,</li> <li>• Blackmail,</li> <li>• Extortion,</li> <li>• Manslaughter,</li> <li>• Murder<sup>4</sup>,</li> </ul>
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<sup>4</sup> Indirect victims in a case of murder or manslaughter: minor children and spouses of the direct victim, and parents and unmarried

<ul style="list-style-type: none"> <li>• Sexual exploitation,</li> <li>• Female genital mutilation,</li> <li>• Being held hostage,</li> <li>• Peonage,</li> <li>• Involuntary servitude,</li> <li>• Slave trade,</li> </ul>	<ul style="list-style-type: none"> <li>• Felonious assault,</li> <li>• Witness tampering,</li> <li>• Obstruction of justice,</li> <li>• Perjury,</li> <li>• Attempt, conspiracy or solicitation to commit any of these crimes.</li> </ul>
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You must be willing to cooperate in the investigation or prosecution of criminal activity committed against you. You can apply for the U-visa as soon as you can get an official certification and gather the proof of “substantial physical or emotional abuse.”

You can receive the U-visa even if the criminal case has not yet been filed, if prosecutors decide not to file the criminal case, if a case is filed and you are not needed as a witness, if the abuser cannot be prosecuted because he is a diplomat, if the abuser eludes arrest, or if the abuser is not convicted of the crime.

Your children can also receive U-visas if they qualify independently as a victim of criminal activity or if they are your children under immigration law. Some other family members can also receive U-visas that are based on their relationship to the victim of the primary criminal activity.

**5. Gender Based Asylum**

In some cases battered immigrants may also qualify for a form of immigration called gender based asylum. This is the most difficult form of relief to get and you must seek the assistance of an immigration lawyer with expertise in gender-based asylum.

To qualify for asylum in the U.S., you must establish that s/he is a refugee. To be classified as a refugee, you must prove you have a well founded fear of suffering harm in your home country that legally is called “persecution.” You then must show that the persecution was or will be on account of **Race, Religion, Nationality, Membership in a Particular Social Group, or Political Opinion**. Also, you have to show that the persecution you suffered was committed by a foreign government, or that that government is or was unwilling or unable to protect you from harm. You usually only have one year to apply after coming to the U.S.

Some battered immigrants who qualify for gender-based asylum may also qualify for a U-visa if domestic violence was committed against them in the United States.<sup>5</sup>

**6. Trafficking Victims Visas (T-visas)**

If you came to the U.S and were recruited, coerced, forced, or deceived into a job that you could not leave, you may be a victim of trafficking. As a victim of trafficking, you may be eligible for the T-visa. For a T-visa trafficking is defined as:

“sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not 18 years of age; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.”

In order to qualify for the T-visa, you must satisfy the following four conditions:

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minor siblings if the direct victim was under 21 years of age  
 See New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007) (to be codified at 8 C.F.R. pts 103, 212, 214, 248, 272a and 299).  
<sup>5</sup> See 8 U.S.C. §§ 1101(a)(4), 1101(a)(15)(U) (2007).

- You must be or have been a victim of a severe form of trafficking in persons; and
- You must be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a Port of Entry, on account of trafficking; and
- You must have helped and/or show willingness to help with any reasonable request for help in the investigation or prosecution of trafficking — OR — you must be less than 18 years old;
  - If your physical or psychological trauma makes it difficult to cooperate with law enforcement you may be eligible for a waiver of this requirement
- You must demonstrate that you would suffer extreme hardship involving unusual and severe harm upon removal

T-visa holders can get legal work authorization and are granted the same access to public benefits as refugees. Spouses, children, parents and siblings of minors who are a T-visa holder may also be able to get immigration relief and accompanying benefits.

### **7. VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act of 1997)**

If your abusive spouse or parent is Nicaraguan or Cuban, you may qualify for VAWA NACARA. This is self-petitioning for Nicaraguan or Cuban battered spouses and children. VAWA NACARA helps victims whose abusers did not file for lawful permanent residency for themselves. The battered spouse or child must have been in the United States when the first application was filed (which must have been before April 1, 2000).

If your abuser is an El Salvadoran, Guatemalan or Eastern European spouse or parent you may also qualify for VAWA NACARA help. VAWA NACARA offers protection from deportation and access to lawful permanent residency for abused spouses and children who were with the abuser at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status. It allows battered spouses, children, and children of the battered spouse temporary protection from removal—even if they are no longer married to the abuser, if they were married when they filed their case.

### **8. VAWA HRIFA (Haitian Refugee Immigration Fairness Act of 1998)**

If your abuser is Haitian you may qualify for VAWA HRIFA. It means that Haitians (natives, citizens, and nationals) can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and they met the general requirements for lawful permanent residency. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA—if they are Haitian and in the United States on the date the application is filed. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian, even if the abusive Haitian spouse or parent never applied for lawful permanent residency.

### **9. VAWA CUBAN ADJUSTMENT (Cuban Adjustment Act of 1966)**

If your abusive spouse or parent is Cuban you may qualify for VAWA Cuban Adjustment, regardless of your own citizenship or place of birth. The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and must meet the requirements for lawful permanent residency. Spouses and children can also receive lawful permanent residency through the Cuban Adjustment Act if they live with their spouse or parent Cuban Adjustment Applicant in the U.S. Special relief is available for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban, even if he



never applied for lawful permanent residency under the Cuban Adjustment Act. They do not have to currently live with the spouse or parent.

## **10. VAWA Abused Adopted Child Self-petitioning**

Generally, adopted children must live with their adoptive parents for two years before they can gain legal immigration status. VAWA allows abused adopted children to obtain permanent residency regardless of how long they have been in the legal custody of their adoptive parent. They do not have to meet the residency requirement. To qualify for this the child must have been battered or subject to extreme cruelty by the adoptive parent or by a family member of the adoptive parent.

## **11. Special Immigrant Juvenile Status (SIJ)**

If you are under 21 years old, are in the United States, and have been abused, neglected, or abandoned, you may qualify as a Special Immigrant Juvenile (SIJ) for immigration status. To qualify you must have been declared a dependent by a juvenile court, which is broadly defined as a court in the United States capable of making determinations about the custody and care of juveniles, or a court must have committed you to the custody of a state agency, department, or individual. You also must demonstrate that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. Additionally, the court must determine it is not in your best interest to be returned to your country.

When a child has been battered, abused, neglected, or abandoned, a special VAWA provision bars state and federal government officials from requiring the child to communicate with the child's abuser or family member of the abuser at any stage of the SIJ status application process.

## **12. Women Who Met Their Spouses through International Matchmaking Agencies**

(International Marriage Broker Regulation Act (IMBRA) of 2005)

Women who met their US citizen or Legal Permanent Resident spouses through an arranged marriage or an international matchmaking agency can legally access protection orders, police assistance, shelter and domestic violence services without regard to how they met their abusive spouse, fiancé or boyfriend. They have the same rights as any other immigrant woman to attain legal permanent residency through their marriage. They also have the right to see his criminal history and any domestic violence protection orders issued against the fiancé or spouse.

If you came to the United States on a fiancé visa to qualify for immigration status you must:

- You must have married the individual who originally arranged for the fiancé visa; and
- You must have been legally married within 90 days of entering the United States on said fiancé visa.

If you entered the United States on a fiancé visa and your fiancé did not marry you, you married another citizen, lawful permanent resident, work visa holder or someone else who is abusing you, or if your fiancé married you after the 90 day period had passed, seek help from an immigration attorney who will help you learn what other immigration options you might have.

## **Violence Against Women Act (VAWA) Confidentiality**

Congress recognized that abusers of immigrant victims and crime perpetrators of both trafficking and sexual assault often threaten victims with deportation. To stop people from using immigration officials to further their abuse or criminal activity, Congress created VAWA Confidentiality. VAWA Confidentiality offers the following protections to victims.

Department of Homeland Security (DHS), Department of State, Department of Justice and Department of Labor employees MAY NOT:

- Rely on information from an abuser or abuser's family member to decide if the victim is eligible for any immigration relief.
- Use or share any information contained in or about the existence of any VAWA self-petitioning, T-visa, or U-visa immigration case. Family or criminal court officers or judges, as well as law enforcement officers also cannot use or disclose the cases.
- Take an enforcement action against an immigrant victim at any of the following locations:
  - A shelter;
  - Rape crisis center;
  - Supervised visitation center;
  - Family justice center;
  - Victim services program or provider;
  - Community based organization;
  - Courthouse in connection with any protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking.<sup>6</sup>

If you feel your abuser has contacted immigration or law enforcement with information, tell your advocate or lawyer immediately.

You should consider carrying copies (not originals) of documentation about your VAWA, T or U-visa immigration case (prima facie determinations, approvals) with you so that you can show these papers to an immigration official if you are stopped. If possible, leave copies with a trusted friend, family member, or your lawyer.

If you believe you may qualify for legal immigration status described in this booklet, including a VAWA self-petition, U-visa, or T-visa, you should contact an immigration attorney as soon as possible. This will help protect you if you are contacted by DHS.

### **Battered Immigrants Rights to Access Shelter and Domestic Violence Programs**

There are different services that can help, they include: shelters, hospitals, police, legal aid and other community services. A shelter is a safe secret home, usually free, where you and your children can stay. Shelters provide food, free housing, counseling, and can help you get legal advice. The shelter may also be able to help you find permanent housing, job training, and may be able to help you find out if you or your children qualify for public benefits.

You can find a shelter by calling your local domestic violence program or the National Domestic Violence Hotline — (800) 799-SAFE.

All domestic violence shelters are required to help you, even if you are undocumented.

If you leave your home, do everything you can to take your children with you. Also try to take your important papers. There is a list of suggestions at the end of this booklet.

If your abusive spouse, parent, or over 21 year old son or daughter is a US citizen or lawful permanent resident, before you leave try to find a safe way to write down his or her alien registration number ("A" number). This is the number on his green card, naturalization papers, or other immigration papers he may have filed for you or your children. If he is a citizen, copy down his passport number or try to get a copy of his passport or birth certificate. Having these numbers can greatly help your VAWA immigration case.

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<sup>6</sup> 8 U.S.C. § 1367 (2007).

### **Collecting “Any Credible Evidence” For Your Application**

If you qualify to file for any of the VAWA immigration relief described above, you will need to collect the evidence for your application, such as:

- your written statement (affidavit/testimony),
- statements from friends, family members, victim advocates, or shelter workers,
- copies of your protection order,
- medical records,
- pictures of your injuries,
- police reports,
- court documents (such as trial transcripts, motions, etc.), **OR**
- news articles.

There is not one particular piece of paper that you must have in order to prove your case. Evidence you provide to DHS for your case cannot be disclosed to your abuser. If you testify in immigration court, you can request that the court provide an interpreter for you.<sup>7</sup>

### **Family Law Protections for Battered Immigrants**

*Call an immigration lawyer to help you before you get a divorce.*

If you are a battered immigrant and your spouse files for divorce, or if you are considering seeking divorce, contact an immigration lawyer. Divorce may prohibit you from access to legal immigration status. The timing of the divorce, marriage, and immigration applications matter, so consult an attorney immediately. You may have to show you were married in good faith, so keep proof of your marriage, such as family pictures or papers.

### **PROTECTION ORDERS What is a protection order?**

A protection order (also called a restraining order, CPO, or PPO) is a document from a court that says the abuser cannot do, or must do, certain things.

### **What are the requirements to obtain a protection order?**

- Depending on each state's statute, you must prove that you are a victim of domestic or dating violence; **AND**
- You must also have or have had a relationship to your abuser through:
  - Marriage (spouse, former spouse, mother-in-law, father-in-law, child/stepfather relationship);
  - Blood lines (your natural mother, father, siblings, cousins, aunts and uncles);
  - Adoption;
  - Having a child in common;
  - Living together;
  - A current or former dating relationship.

You can get a protection order based on assault or domestic violence (whether or not there are visible injuries), sexual assault, stalking, harassment, parental kidnapping, or threats. You may file for a protection order where you live, where the abuser lives, or where the violence happened.

<sup>7</sup> See U.S.C. § 1229b(b)(2)(D) (2007).

You have the right to get a Protection Order **even if you are undocumented**. You do not have to answer questions about your immigration status to get a protection order or to have it enforced.

### Can a protection order help with my immigration application?

If you apply for domestic violence related immigration, a protection order will help show you were abused. A protection order can also help if you have it request that:

- The abuser not withdraw any immigration applications filed on your behalf.
- The abuser not act to hurt your immigration case and not contact any government agency, consulate or embassy about you without permission from the protection order judge.
- The abuser give the court, or replace if he has destroyed, your work permit, ID, bankcard, birth certificate, marriage certificate, passport, and any other important documents.
- The abuser give you copies of his documents for your immigration or child support case, such as of his passport, ID card, income tax returns, bills, his birth certificate, his alien registration card (green card), and work permit. He can be ordered to turn over to the court and to you his social security number, passport number and/or "A" number.
- The abuser pays your immigration case fees.
- The abuser fill out a "Freedom of Information Act" (FOIA) request to release information contained in any immigration case, including for you or your children, which he has filed.

### Can a protection order help if my abuser has threatened to kidnap our children?

Parental kidnapping is a reason to get a protection order in many states. If you fear that your children could be taken away from your community or taken out of the U.S., request in your protection order that:

- you can request sole custody of your children as well as supervised visitation
- the abuser not take your children from the county where you live without a court order;
- that the abuser be ordered not to remove the children from the United States;
- you, the abuser, and the judge sign a statement preventing the embassy of the abuser's home country from issuing visas to that country for your children without a court order.
- If the abuser has your children's passports, request that he return those to you or to the court.
- Send a letter and a copy of your protection order to the U.S. Passport Office to inform them that you or the court have the children's passports and that no new passports should be issued for the children.
- You can also fill out a form to request notification from the State Department if one parent attempts to get a passport for the child.<sup>8</sup>

### Do I have to leave my abuser in order to get a protection order?

**No.** You can have a protection order issued against someone while you are living together. This order can require your abuser to stop his violent behavior and/or attend a batterer's counseling program.

### How do I get a protection order?

You can obtain a protection order by yourself or with the help of an advocate or attorney. You can ask the court to provide an interpreter to do this. Do not use an interpreter who might be

<sup>8</sup>The Children's Passport Issuance Alert Program (CPIAP), summary of the program: [http://travel.state.gov/family/abduction/resources/resources\\_554.html](http://travel.state.gov/family/abduction/resources/resources_554.html) and official form: <http://www.state.gov/documents/organization/80111.pdf>



biased toward or afraid of your abuser. If you need immediate help, you will be able to see the judge the same day and receive a temporary protection order, which lasts 2 weeks to a month.

To apply for a protection order on your own: go to your local courthouse and fill out a petition for a protection order. In this petition, describe the full history of violence. Start with the most recent incidents and include the way it has impacted your and your children's lives. You may use more pages than provided by the court and then attach them to the form.

After you file the paperwork, if you are seeking a temporary order, you will see a judge that day.

Whether or not you receive a temporary protection order, both you and the abuser will be required to come to court on the day of the full protection order hearing. **Do not go to this hearing by yourself.** Ask an advocate or a friend to come with you. During the hearing you will have the opportunity to tell the judge about all of the abuse and threats against you and/or your children. Explain how this has affected you and your children. You should also show the judge torn clothing, pictures of injuries, destroyed property, medical reports, and police reports to prove the abuse.

In the U.S. legal system, your spoken testimony has value and is a formal legally accepted form of evidence. A woman's testimony is as valuable as a man's. You will receive a packet, which includes a copy of the petition you filed, notice of your court date for the full protection order, and a copy of any issued temporary protection order. The abuser will also need to be "served"<sup>9</sup> with these materials. Depending on your state, the service of materials will be either be the state's responsibility or yours. Check with the court clerk or your advocate to find out the policy for your court. If it is your responsibility to serve the abuser with these papers, you cannot do it yourself. You will need to either hire a process server or have a someone not involved in or serving as a witness to the case serve (give the papers to) the abuser and sign a statement to the court verifying delivery.

### **Do I need a lawyer to obtain a protection order?**

**No.** In most states, you can obtain a protection order without hiring an attorney. However, if possible, obtain an attorney and let the court know if you need an interpreter. If your abuser plans to fight for custody of your children or has filed for a protection order against you, contact an attorney immediately. If you are undocumented and your abuser obtains an attorney, you should not go to court by yourself. Ask your local domestic violence shelter or program to locate a lawyer or legal advocate to help you with your case. There are programs in every state that offer free and low cost legal services to victims of violence against women.

### **What if I decide to leave the county or state where I got my protection order?**

Police officers in the United States are required to recognize and enforce out-of-state protection orders under the Violence Against Women Act. When you move, get a certified copy of your protection order from the courthouse and staple the full faith and credit provisions of the Violence Against Women Act<sup>10</sup> to the back. When you arrive at your new location, call the local domestic violence program to find out how to enforce your order in your new state.<sup>11</sup>

### **Once I have a protection order, can I change parts of it or withdraw it?**

**Yes.** At any time you may file to modify or change it. If you return to your abuser after you get a protection order it is still valid, but in some states you may have to adjust the protection order.

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<sup>9</sup> Service of Process is a formal method of giving these papers to the abuser so that the court knows he has received them.

<sup>10</sup> Go to [www.legalmomentum.org](http://www.legalmomentum.org) and go to the Immigrant Women Program for a copy of these provisions.

<sup>11</sup> 8 U.S.C. § 2265 (2007).

## LEGAL INFORMATION FOR BATTERED IMMIGRANT WOMEN WITH CHILDREN

If your children have been abused, they may qualify for immigration relief.

If you have been abused, and your children have not been abused, your children may be able to receive immigration relief from yours.

- If you qualify to file a VAWA self-petition you may include your children in the petition.
  - When your application is approved, both you and your children will receive an agreement that DHS will not deport you (called deferred action status) and your children will receive their green cards at the same time you do.
- If you qualify for VAWA suspension or cancellation, your children will be allowed to stay with you in the United States while you file papers for them to receive their lawful permanent residency.
- If you qualify for a battered spouse waiver, your children will switch from conditional residents to lawful permanent residents along with you.
- If you qualify for a U-visa, then your children should be able to get U-visas with you.
- Mothers and stepmothers of adopted children can also qualify as self-petitioners, for VAWA cancellation of removal, and as U and T-visa applicants, without regard to the immigration status of the abused child or stepchild.

### Get a Protection Order

Getting a protection order is the fastest way to obtain temporary custody of your children. If you leave the relationship, ask for custody and child support in your protection order. The order can also establish a visitation schedule between the children and abuser. If there is a no-contact order in your protection order, someone else should help you safely communicate with your abuser about the children. This could be an advocate, a friend, family, or your attorney. Even if you choose not to leave your abuser, you may get a protection order that says that he cannot abuse you or your children.

If you go to a shelter or safe place before filing for a protection order, take your children with you. You should tell your advocates, your attorney and/or the judge if your abuser has threatened that if you try to leave him he will get the children and you will not see them again, or if he has threatened to kidnap the children or remove them from the United States.

Teach your children to use 911 so that they can get help if you or they are injured or if the abuser violates the protection order.

### **YOU ARE ENTITLED TO CUSTODY AND CHILD SUPPORT REGARDLESS OF YOUR IMMIGRATION STATUS.**

#### File for Permanent Custody of your Children

A protection order offers you custody of your children while it is in effect, usually between one and three years, depending on the state that issued the civil protection order. To have permanent custody of your children, you will need to file a family court case asking for full legal custody of your children.

Find a lawyer to help you with your custody case if you think that your abuser wants custody, will say that he doesn't want you to have custody, or come to the court with his own lawyer. If your abuser comes to court in a custody or protection order case with a lawyer, you should ask the court for time to find your own lawyer. You should not agree to or sign anything without a lawyer. You can find a family law attorney by calling your local domestic violence program or legal aid office.

The judge should not ask you about your immigration status in family court. If the abuser brings up immigration status, find an attorney with domestic violence, custody, and immigration experience.

In a custody case, the judge will consider the best interests of the children. The judge will look at the criminal and drug abuse histories of both parents. In most states, judges must also take into account whether there has been domestic violence, which person was violent or abusive, and what affect this has had on the children. Most courts do not award custody to abusers. You can seek legal custody of your children even if you are in the US without legal permission.

### **Ask for a Safe Visitation Schedule**

In protection order and custody cases, judges usually grant visitation rights to the abuser unless there are a lot of reasons not to. Tell the judge if you think that you or your children will be in danger during visits with the abuser.

Tell the judge if the abuser drinks or uses drugs in front of the children, has driven drunk or under the influence of drugs, has hurt the children, has emotionally abused the children, has used too much or inappropriate discipline, or has threatened to kidnap the children. Tell the judge if the children have problems as a result of the violence.

Judges can order supervised visitation if they are worried about children's safety. Supervised visitation means the abuser can only visit the children when someone, like a friend, relative, or counselor, is with the children and the abuser during the visit or a specific visitation location.

If your abuser has unsupervised visitation with the children, the court order must clearly state how the children are to be exchanged and the exact dates and times of visitation. You do not have to have contact with the abuser for their visit. If you are worried that the abuser will not return the children or you do not want the abuser to know where your home or the children's schools are located, a trusted friend or family member could exchange the children. Speak to your local domestic violence agency for visitation exchange options.

If your abuser fails to attend visitations, ask the court to suspend visitation. If you are worried that the abuser is neglecting your children during visitation, get help from a lawyer. If your abuser does not return the children after visitation is over, call the police immediately.

### **Request Child Support**

If you have physical custody of your children or if you receive full or joint custody of your children, your abuser has to pay you money to support the children, usually until they are 18 or 21. You can receive child support through your protection order and/or through a permanent child support case. The amount of support that you receive depends on your earnings, the abuser's earnings, the number of children he supports, child care costs, and who has physical custody of the children for what proportion of time.

If you receive a child support order, particularly in domestic violence cases, it is best to ask that the child support be taken directly from your abuser's paycheck and paid to the court. He can be ordered to go to jail until he starts paying and/or pays past due child support.

**PUBLIC BENEFITS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN**

**Benefits Available to All Immigrants**

Programs designed to protect life or safety are open to everyone. Your immigration status does NOT matter for these programs. Some of these programs are:

<ul style="list-style-type: none"> <li>• Crisis counseling and intervention programs;</li> <li>• Services and assistance relating to child protection;</li> <li>• Adult protective services;</li> <li>• Violence and abuse prevention;</li> <li>• Victims of domestic violence or other criminal activity;</li> <li>• Treatment of mental illness or substance abuse;</li> <li>• Short-term shelter for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children. This includes emergency shelter and transitional housing for up to two years.</li> <li>• Soup kitchens;</li> </ul>	<ul style="list-style-type: none"> <li>• Programs to help individuals during periods of adverse weather conditions;</li> <li>• Community food banks;</li> <li>• Senior nutrition programs and other nutritional programs for persons requiring special assistance;</li> <li>• Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety;</li> <li>• Activities, designed to protect the life and safety of workers, children and youths, or community residents (such as police, fire, ambulances, etc.); and</li> <li>• Any other programs, services, or assistance necessary for the protection of life or safety.</li> </ul>
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If you are a victim of domestic violence, sexual assault, trafficking, or another crime listed in the U-visa discussion, may you qualify to receive free legal services from legal aid programs.

**Benefits Only “Qualified Immigrants” Can Access**

Some battered immigrants may be able to receive some public benefits if they have a VAWA immigration petition, or a spouse or parent sponsored visa case filed with DHS and can prove a “substantial connection” between the abuse and the need for public assistance. They are called “qualified immigrants.”

**Who Are “Qualified Immigrants” Eligible for Public Benefits?**

<ul style="list-style-type: none"> <li><input type="checkbox"/> Lawful permanent residents (including conditional permanent residents);</li> <li><input type="checkbox"/> Refugees;</li> <li><input type="checkbox"/> Asylees;</li> <li><input type="checkbox"/> Persons granted withholding of deportation</li> <li><input type="checkbox"/> Persons granted cancellation of removal;</li> <li><input type="checkbox"/> Cuban/Haitian entrants;</li> <li><input type="checkbox"/> Veterans;</li> <li><input type="checkbox"/> Persons granted conditional entry;</li> <li><input type="checkbox"/> Amerasians;</li> <li><input type="checkbox"/> Persons paroled into the United States for a year or more;</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or family-based petitions before DHS; and</li> <li><input type="checkbox"/> Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident parent, with pending or approved VAWA cases or family-based petitions before DHS.</li> <li><input type="checkbox"/> Trafficking victims applying for T visas</li> </ul>
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When applying for public benefits, the benefits agency should only check on the immigration status of the person applying. U.S. citizen, lawful permanent resident, and “qualified immigrant” children may receive certain public benefits even when their parents cannot. If you are asked



questions about your immigration status when you are applying for benefits only for your qualified children, you should tell the agency person that you “are not applying for yourself.”

**Qualified Immigrants Can Receive:**

<ul style="list-style-type: none"> <li>• Temporary Assistance for Needy Families (TANF) (unless you entered after August 22, 1996 and are subject to the 5 year bar)</li> <li>• Medicaid and Medicare (unless you entered after August 22, 1996 and are subject to the five year bar)</li> <li>• Food Stamps (all qualified immigrant children can receive food stamps however, qualified immigrant adults must be in qualified status for 5 years).</li> <li>• Social Security Disability Insurance</li> <li>• Administration on Developmental Disabilities (ADD) (direct services only)</li> <li>• Child Care and Development Fund</li> <li>• Independent Living Programs</li> </ul>	<ul style="list-style-type: none"> <li>• Job Opportunities for Low Income Individuals (JOLI)</li> <li>• Low-Income Home Energy Assistance Program (LIHEAP)</li> <li>• Postsecondary Education Loans and Grants</li> <li>• Public Housing</li> <li>• Refugee Assistance Programs</li> <li>• Section 8 Subsidized Housing</li> <li>• State Children’s Health Insurance Program (CHIP)</li> <li>• Title IV Foster Care and Adoption Assistance Payments (if parents are “qualified immigrants”)</li> <li>• Title XX Social Services Block Grant Funds</li> </ul>
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Check with an attorney or advocate when applying because some benefits have timing rules for when you are eligible to receive them. Few immigrant victims will qualify for benefits through SSI.

Receiving public benefits will not prevent a VAWA self-petitioner from obtaining lawful permanent resident status.

**How Battered Immigrants Become Qualified Immigrants**

Battered immigrants are “qualified immigrants” if they meet the following requirements:

- The immigrant or the immigrant's child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse's or parent's family member living in the same household and the applicant did not participate in the abuse.  
**AND**
  - The battered immigrant has an approved family-based petition or VAWA self-petition; **OR**
  - after a petition has been filed, DHS gives permission to receive public benefits (this is called a prima facie determination); **OR**
  - the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card); **OR**
  - an immigration judge has decided in an ongoing VAWA cancellation case that the battered immigrant can receive public benefits (also know as a prima facie determination);
- **AND**
- The applicant does not live with the abuser or needs the benefit to leave.  
**AND**
- There is a “substantial connection” between the abuse and the need for the public benefit. For example: when the reason for needing a benefit is connected to escaping abuse.

**FEDERAL AND STATE FUNDED BENEFITS**

**Food**

*All documented and undocumented immigrants qualify for emergency food assistance from food banks and charitable organizations.*

## Food Stamps

### Federal Programs

There is Food Stamps access for a small number of qualified immigrants. “Qualified immigrants” include refugees, asylees, veterans and their spouses and children, immigrants who have worked for 40 quarters, and some others. See an attorney or advocate to find out if you qualify.

### State Food Stamps Program

States can choose to provide state-funded food stamps to immigrants, but only a few do. Each state has specific status or need requirements. A local social worker or attorney can help you apply. For an up-to-date list of state food stamps programs go to: [www.NILC.org](http://www.NILC.org)

## Shelter

### Public Housing and Housing Vouchers

Shelter programs for the homeless, domestic violence victims, runaways, abandoned children, or abused children are open to all regardless of immigration status. Only “qualified immigrants” can additionally access public housing or federally funded housing vouchers.

## Healthcare

### Emergency Medicaid Is Open to Both Documented and Undocumented Immigrants

All immigrants are immediately eligible for Emergency Medicaid. Emergency Medicaid covers labor and delivery, as well as treatment for medical conditions “with acute symptoms that could place the patient’s health in serious jeopardy, result in impairment of bodily functions, or cause dysfunction of any bodily organ or part.” For a chart of the types of health care services immigrants and immigrant victims can access go to: [www.legalmomentum.org](http://www.legalmomentum.org)

### Medicaid and SCHIP

Medicaid provides access to health care services for people in need. SCHIP provides health insurance for families with children in need. Generally only “qualified immigrants can receive Medicaid and SCHIP, which includes immigrant women and children who are abused by their U.S. citizen or lawful permanent resident spouses or parents and have an immigration petition filed with, or approved by DHS. They must also show that there is a “substantial connection” between the abuse and the need for the aid.

For state-by-state charts of immigrant victim eligibility for Medicaid and/or Victims of Crime Act Funded prenatal and/or post assault health care go to: [www.legalmomentum.org](http://www.legalmomentum.org). Some states provide state funded medical assistance to some immigrants; visit [www.nilc.org](http://www.nilc.org) to learn more.

## Cash Assistance

### TANF

Temporary Assistance for Needy Families (TANF) is a program that provides cash assistance to disadvantaged families. States have the option to give these benefits to some needy immigrant families. Generally, only “qualified immigrants” can receive TANF.

Some State TANF Programs provide cash assistance to some qualified immigrants.

For an up-to-date list of states offering financial assistance to immigrants visit: [www.NILC.org](http://www.NILC.org)

### Family Violence Option for Battered Women Receiving TANF

The Family Violence Option (FVO) permits states to grant “good cause waivers” for certain TANF program requirements, including mandatory work requirements and time limits. If you are an immigrant victim eligible for TANF you may be eligible for your state’s FVO.

### **Immigrant Status Reporting Requirements**

The Attorney General of the United States has instructed state welfare agencies to only request information on immigration status about the person who applies for benefits. You can apply for benefits only for your children and not answer questions about your own immigration status or social security number. You should bring an advocate or attorney with you if you apply to help guard against unlawful questioning and to help ensure you receive benefits for which you qualify.



### **EMPLOYMENT AND WORKPLACE RIGHTS<sup>12</sup>**

Immigrant workers, documented or undocumented, are protected by federal and state labor laws. If you file a complaint with the Equal Employment Opportunity Commission (EEOC) regarding claims for unpaid wages, worker's compensation or any other employment related problem, it is not necessary to answer questions about your immigration status for your complaint to be processed. However, with regard to state and local laws, claims and practices differ, so consult with an attorney or advocate in your area to help you decide how to enforce your employment rights.

If you are an undocumented immigrant and are or were the victim of criminal activity in the workplace or by a coworker or supervisor, and you are willing to report the activity to law enforcement or the Equal Employment Opportunity Commission (EEOC) or another investigative agency, you may qualify for a U-visa. If you came to the U.S and were recruited, coerced,

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<sup>12</sup> Adapted from Legal Momentum, EEOC, Asian American Legal Defense and Education Fund, and National Employment Law Project Materials

forced, or deceived into a job that you could not leave, you may be a victim of trafficking. See the earlier trafficking section for more information.

### **Protections Offered By the Equal Employment Opportunity Commission (EEOC)**

Federal employment discrimination laws protect all employees in the United States, including those who do not have work authorization. It is unlawful for an employer to discriminate against you because of your immigration status. It is also unlawful for your employer to report or threaten to report your status to DHS if you oppose unlawful discrimination or participate in a case under the anti-discrimination laws. Even if you are undocumented, if your employer retaliated against you because you sought help with work problems, you might be entitled to some compensation.

Undocumented workers are also potentially entitled to some of the same remedies available to all other workers for violations of the laws enforced by the EEOC except when the remedy conflicts with the purpose of immigration law.

### **What should I know about sex discrimination laws?**

Your employer may be violating anti-discrimination laws if it permits domestic abuse, sexual assault, or sexual harassment to occur in the workplace, or if it treats abused women differently than male employees. Your company's sex discrimination and sexual harassment policy (if it has one) may be a basis for you to ask your employer to stop discriminating against you, or to take steps to halt, reduce, or prevent sexual harassment.

### **Do I have any legal claims if I have been fired or forced to quit because of domestic violence?**

You may have a claim for wrongful discharge. Most employees are employees at will. This means they can be fired for any reason. There are some exceptions to this rule. One exception is that an employer cannot fire a person for a discriminatory reason.

Another exception is that in most states an employer cannot fire a worker for a reason that violates public policy. What this means is different in each state, but "against public policy" means generally things a state has decided hurt all people in that state if they are allowed to happen. If you were fired because you were suffering from domestic violence, you may be able to prove that your firing violated public policy.

## **SAFETY PLANNING FOR IMMIGRANT AND REFUGEE WOMEN**

Safety planning is an important first step for all battered women. Safety planning will help protect and empower you against future threats of domestic violence toward you and/or your children. It can also help you prepare should you now or in the future decide to leave your abuser.

The time when you decide to leave your abuser can be the most dangerous for you and your children, because violence often escalates when the abuser feels that he is losing control over you. You have options if you want to leave the relationship:

- 1) You can obtain a protection order that removes your abuser from the family home; **OR**
- 2) You can leave the home you share with your abuser taking the children with you.

You should be aware that you can take both legal and other steps towards ending the abuse, whether or not you have legal immigration status in the United States.

## **EMERGENCY MEASURES**



- Contact a local domestic violence hotline to find what laws, shelters, and resources are available in your community, state, or any area in the United States.
- Create a plan for a safe exit from your home. Practice your plan with your children.
- Plan the safest time to get away.
- Have car keys, purse/wallet, identity cards for you and your children and any other essential items in an easily to access place.
- Tell someone what is happening to you. If possible, tell your neighbors about the abuse and tell them to call the police if they hear any suspicious noises coming from your home. You can also arrange a signal with neighbors to let them know you are in danger and need police help— for example flashing lights or a code word.
- Know where you can go for help. Arrange a place where you and your children can stay temporarily, such as with close friends, neighbors, relatives, or at an emergency shelter.
- If you are considering staying at a battered women's shelter:
  - You should get the telephone number of the shelter.
  - Emergency and short-term shelters and transitional housing programs cannot ask you any questions about your immigration status and all immigrants are entitled to emergency short term shelter programs.
  - If you do not speak English, ask the shelter to provide you with a translator. If you cannot communicate this to the shelter workers, have a trusted friend, family member or co-worker help you communicate with the shelter.
  - You can tell a shelter about any special religious, cultural, or dietary needs you may have.
- In a safe and accessible place, store a suitcase with important items you may need if you need to leave your house, such as: clothes for you and your children; money; important documents that you might need to prove the abuse you have suffered; immigration paperwork, photos and identification.
- If you foresee an outbreak of violence, try to move away from weapons and out of the kitchen where knives or heavy objects could be used as weapons. Move to a low-risk place near an exit to the outside. Avoid bathrooms, kitchens and garages.
- Use your judgment and intuition. You have to do what you can to protect yourself and your children until you are out of danger. If you can, flee rather than attempt to fight back. Avoid using weapons or objects against your abuser if possible.
- Call the police if you are in danger or need help.
- The police will help you if you are a victim of domestic violence or any other crime even if you are undocumented. The police should not ask you any questions about your immigration status. If they do, then you are not required to answer. Tell them you want to speak to a lawyer. If the police do not speak your language, try to ask for an interpreter.
- If you are injured, go to the hospital emergency room or your doctor and report to them what has happened to you. Ask them, before you tell them what happened, whether what you tell them is confidential. If so, tell them what happened and ask that they document your visit and your injuries. If they are required to report domestic violence to the police they must tell you this when you ask and you can decide if you want the police informed. If so, tell them what happened and ask that they document your injuries. If they must report to the police, and you do not want them to, do not tell them what happened; just ask them to document your injuries.
- If you encounter Department of Homeland Security officials, tell them you are a victim of domestic violence, sexual assault or trafficking and show them copies of any immigration papers, police reports, or protection orders you have.
- If you are stopped by DHS officials it is also important to tell them you want to call an attorney. As soon as you begin working with an advocate or an attorney ask them for their phone numbers so that you can call your attorney or advocate if you are stopped by DHS officials.

- If you encounter DHS officials at any of the following locations, find an advocate or attorney to help you tell DHS that their contact with you at this location violates VAWA confidentiality. Also obtain the name and contact information including telephone numbers for any persons who witness DHS contact with you at these “VAWA confidentiality” protected locations.
  - A shelter
  - Rape crisis center
  - Supervised visitation center
  - Family justice center
  - Victim services program or provider
  - Community based organization
  - Courthouse in connection with any protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking.

VAWA confidentiality is a federal law that protects immigrant victims against government release of information regarding their victimization. It also bars government officials from relying on information provided by an abuser to deny a victim immigration benefits or to attempt to remove her from the United States.<sup>13</sup>

### **SAFETY FOR THE CHILDREN**

- Plan with your children and identify a safe place for them if another domestic violence incident should occur – a room with a safe lock or a neighbor’s house where your children can go for help. Reassure them that their job is to stay safe, not to protect you.
- Teach your children how to dial 911 in an emergency and where to go if the abuser becomes violent.
- Plan ahead so that if it is necessary to flee, you will be able to flee with your children.
- Inform school personnel about who is allowed to pick the children up from school.
- Provide childcare workers and staff at your children’s school with a copy of your protection order and a list of the only people who may see or pick up your children from their care.
- In case your abuser abducts your children, create a plan for what your children can do to safely try to prevent this. Teach your children how to call the police and that calling the police is for their safety and the right thing to do. Teach them how to make a collect call to you or a trusted friend, minister or family member if they are kidnapped. Teach them how to call for help if they are abducted from a public place.
- If you are stopped by DHS and you are the sole caretaker of your children tell DHS this immediately. DHS may allow some sole caretaker parents and breastfeeding mothers to continue caring for their children until their case is decided. If you are stopped by DHS it is important that you contact an immigration attorney immediately.

### **GENERAL SAFETY TIPS**

- Take photographs of any injuries you sustain. Also take photographs of torn clothing, broken property, and furniture in disarray. Take these photos when it is safe to do so. Leave copies of the photographs and the negatives in a safe place outside of your home and away from your abuser.
- Keep evidence of the abuse (ripped clothes, photos of injuries and bruises, etc.) even if you are currently not considering separating from your abuser. Should you ever decide to take any legal action to protect yourself and your children, to obtain custody, support, welfare or immigration benefits, you will need this evidence.

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<sup>13</sup> 8 U.S.C. § 1367 (2007).

- Always keep a copy of your protection order and referral list with you (if safe to do so) and store another copy in a safe location.
- Alter your routines so that your abuser cannot find you. Change the times and the routes that you go to and return from work, the times and places you go grocery shopping, the times you pick up and drop off the children from day care and the dates and times you have any other regular appointments.
- Keep a detailed record of your interactions with the abuser, such as telephone calls, e-mails, or letters. This information may help you to prepare for court. Keep a record of all of his actions that violate your protection order. Get a telephone answering machine and answer all calls through the machine. This can help you record calls that document ongoing harassment. Keep all letters and e-mails that your abuser sends to you.

### LEGAL STEPS

Contact the local domestic violence hotline, shelter or legal services program for help. They can inform you of your legal rights and help you access legal relief. They can also help to find interpreters to assist you. To find an advocate or attorney in your community who can help you call the National Domestic Violence Hotline 1-800-799-SAFE or the Rape, Abuse and Incest Network Hotline at 1-800-656-HOPE for referrals. Once you have an advocate or attorney helping you, show them this booklet and ask them to contact the expert resources listed at the end of this booklet. The experts listed provide technical assistance to advocates, attorneys and other professionals working with immigrant victims. They DO NOT provide legal representation to victims.

### CRIMINAL CASES

- U.S. laws protect all domestic violence victims without regard to immigration status.
- If you call the police for help they are not supposed to ask you any questions about your immigration status.
- Call the police for help if you are being abused (911).
- It is a crime anywhere in the United States to be hit, kicked, punched, threatened, or injured in any way by a family member, even if this occurs in your home.
- Abusers can be prosecuted for their crimes against family members, even if that family member does not have legal status in the United States.
- Cooperating in the criminal prosecution of your abuser may increase your chances of obtaining legal immigration status in the United States.
- Check with a local domestic violence or immigration program about police and DHS practices in your area.

### CHECKLIST OF WHAT TO TAKE WITH YOU WHEN YOU LEAVE YOUR ABUSER

- photo identification for yourself and your children
- current photos of your children
- current photos of the abuser
- passports for yourself and your children
- children's birth certificates
- your birth certificate
- your children's social security cards
- your social security card, if you have one
- green cards (alien registration card), for you and your children if you and/or they have one
- money for phone calls, transportation, and expenses
- credit cards, checkbooks, bank books, ATM cards,
- work permits for you and your older children
- welfare identification for you and your children
- keys to the house, office and car and any ownership documents

- drivers license and registration
- necessary medicines, medical records, and insurance papers for yourself and your children
- children's school and vaccination records
- small saleable objects
- clothing for you and the children
- all court documents
- telephone/address books, including victim service providers
- children's favorite toys, books and blankets
- your sentimental and irreplaceable items, such as photographs, jewelry, special gifts from your family

**TO PROVE THE ABUSE AND THE EFFECT IT HAS HAD  
ON YOU AND YOUR CHILDREN**

- copies of police reports
- copies of medical records
- hospital records documenting abuse (even if you did not tell anyone the cause of the abuse)
- copies of current and former protection orders (civil, criminal, temporary, emergency)
- photographs of your injuries
- torn clothing or destroyed property
- your diary and/or calendar in which you recorded incidents of abuse or problems
- names of shelters where you have stayed
- names, addresses and telephone numbers of doctors, nurses, counselors, mental health professionals and social workers whom you or your children have spoken with or received treatment from
- names, addresses and telephone numbers of people who: saw your bruises, heard you scream, witnessed any incident of the abuse, you told about the abuse, you have stayed with for refuge or can describe the effect that the abuse has had on you and your children
- names, addresses and telephone numbers of police officers, prosecutors, judges or other government officials who know about the domestic violence you experienced

**TO OBTAIN CHILD SUPPORT**

- your spouse's or the parent of your child's social security number
- a copy of your spouse's or the parent of your child's most recent pay stub
- the name, address, phone and fax number of your spouse's or the parent of your child's employer
- a copy of your spouse's or the parent of your child's tax returns for the past three years
- proof of who is your child's parent (children's birth certificates, acknowledgement of paternity, or other proof)





**FOR BATTERED IMMIGRANT WOMEN WHO MAY QUALIFY FOR A VIOLENCE AGAINST WOMEN ACT FORM OF RELIEF OR OTHER IMMIGRATION RELIEF:**

- work permits, green cards, visa applications, and other immigration papers for you and your children
- copies of any documents filed with DHS
- marriage license and certificate for current marriage
- divorce papers from your previous marriage(s) or your spouse's previous marriage(s)
- birth certificates, adoption, acknowledgement of paternity records for each of your children,
- passports and -94's (record of entry into the US) for you and your children, if you have one
- identification (social security, driver's license, welfare identification)
- copies of your spouse's birth certificate, social security card, green card, passport or certificate of naturalization
- if your spouse was born abroad and is now a citizen or has legal permission from DHS to live and work in the United States write down and take with you his "A" number, the number on his green card, work visa or naturalization certificate.
- court papers filed and court orders related to you, your spouse and your children
- photographs of wedding, wedding invitations, love letters from spouse,
- family photographs from vacations, birthdays, family events and trips you have taken,
- personal property or real property deeds leases and rental agreements in both of your names,
- papers that show you lived with your spouse in the US (such as copies of the lease agreement, real property deed, utility bills, rent receipts, mortgage payment book, letters addressed to the two of you, letters addressed to you and other letters or magazines addressed to your abuser at the same address during the same time period).
- names, addresses and telephone numbers of persons who knew you as a couple, knew that you and your spouse lived together, or who saw any of your injuries or any of the incidents of violence,
- copies of documents related to joint checking or savings accounts
- joint tax returns listing you as a dependant.

- identification with a photograph listing you with your married name,
- life and health insurance policies covering you and your spouse and children
- letter from employer stating that you or your spouse listed the other spouse as an emergency contact

You have just taken the first step toward creating a safe home for yourself and your children by reading this booklet. The next step is to make your own list of local resources, including phone numbers, and record them below.

<b>IMPORTANT PHONE NUMBERS:</b>
Friends:
Local Shelter and or domestic violence advocate:
Local Legal Services:
<p>To locate programs in your area, call:</p> <p style="text-align: center;"><b>National Domestic Violence Hotline</b>                      1-800-799-SAFE (7233)                      1-800-787-3224 (TTY)                      Interpreters are available in many languages.                      Calls cost nothing. Call anytime.</p>
<p><b>Police — 911</b>                      Call the police if you think you or your children are in danger. If the police ask about your immigration status or where you were born, you do not have to answer.</p>
<p><b>Medical Emergency — 911</b>                      The emergency room in any public hospital must give you emergency medical care, even if you are undocumented or do not have insurance.</p>
<p>Once you are working with a battered women’s advocate, social worker or attorney, they can call or go to the websites of the following experts from the National Network to End Violence Against Immigrant Women for technical assistance on how they can better help you. The numbers listed below DO NOT provide direct assistance, advocacy, legal representation, or legal advice to victims.</p> <p style="text-align: center;"><b><u>The National Immigrant Women’s Advocacy Project, American University, Washington College of Law</u></b>                      (202) 274-4457, <a href="mailto:niwap@wcl.american.edu">niwap@wcl.american.edu</a></p> <p style="text-align: center;"><b><u>ASISTA</u></b>                      (515) 244-2469, <a href="http://www.asistaonline.org">www.asistaonline.org</a></p>

# NIWAP



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